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PEH KWEE YONG v. SINAR CO. (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Thean & P. Coomaraswamy JJ.) July 24, 1987]

[Singapore – Civil Appeal No. 47 of 1984]

Conveyancing – Legal requisitions – Clause in Option providing that purchaser may annul sale in event of answers to requisitions being found unsatisfactory to purchaser or their solicitors – Answer to legal requisition that property affected by road widening – Whether purchaser may annul sale and claim 10% deposit.

Conveyancing – "Legal requisitions" – Meaning of.

The respondents were the owners of the property at No. 9, First Avenue, Singapore. On November 25, 1982, the respondents, in consideration of $20,000 paid by the appellant by a document in writing called option, offered to sell to the appellant the property at $1,860,000 and on the terms and conditions as provided therein.

One of the terms of the sale was clause 6 which states, *inter alia*, that "The property is sold subject to your solicitors receiving satisfactory answers to all requisitions sent to or to be sent by them to the various government departments and in the event of any of the answers to such requisitions being found unsatisfactory to you or your solicitors you may annul the sale in which event the 10% deposit paid by you shall forthwith be refunded to you . . . "

On November 30, 1982, the appellant's solicitors submitted to various government department legal requisitions. While awaiting the receipt of the answers to these requisitions, the appellant, on December 4, 1982 accepted the respondents' offer, and in accordance with the terms thereof paid to the respondents' solicitors a sum of $166,000 being the 10% of the purchase price less the initial payment of $20,000, to be held by the solicitors as stakeholder pending completion of the sale. A valid and binding agreement was thus made between the parties.

After the conclusion of the agreement, the appellant's solicitors received the answers to the legal requisitions, all of which appeared to be quite innocuous. On December 16, 1982, the appellants further received the road interpretation plan relating to the property from the Road Division of the Public Works Department (hereinafter referred to as "PWD") which showed a narrow strip of the property abutting First Avenue being affected by a proposal for road widening.

The appellant's solicitors wrote a letter dated December 16, 1982 to the respondents' solicitors informing the latter that the property was affected by road widening and also alleging that there was a misrepresentation made to the appellant that the land area of the property was over 14,000 sq.ft., whereas the actual land area was only 12,900 sq.ft. The letter intimated that the appellant reserved his rights to rescind the contract and to demand for a refund of the 10% of the purchase price, and enquired whether the respondents would agree to a reduction of the purchase price. No reduction of the purchase price was agreed to. The appellant did not proceed with completion of the purchase under the agreement.

Immediately after the time for completion as provided in the agreement had elapsed, the respondents' solicitors gave the appellant 21 days' notice to complete failing which the contract would be treated by the respondents as at end and the deposit would be forfeited and retained for the benefit of the respondents.

The appellant applied to the High Court, *inter alia*, to rescind and annul the sale and purchase of the property on the ground that the answer to the requisition from the PWD was unsatisfactory in that the property was affected by a proposal for road widening. Lai Kew Chai J. dismissed the application and held that a true and natural construction of clause 6 must place it on an objective and reasonable basis and that only those answers to the requisitions which were unsatisfactory to a reasonably determined purchaser could entitle such a purchaser to annul the sale and purchase agreement. On the facts, he held that the area affected by the proposed road widening was so inconsequential that no reasonably determined purchaser would regard it as unsatisfactory. Against the said decision, this appeal was brought.

Held, dismissing the appeal: (1) the term, "requisition," is not a term of art and has no special or defined meaning even amongst conveyancing lawyers. Requisition is synonymous with enquiry or request for information;

(2) the appellant's application dated December 3, 1983 to the PWD for a road interpretation plan was in a standard form prescribed by the PWD and was an enquiry or request for information relating to the property. It was in the ordinary sense a "requisition" and was a requisition for the purpose of clause 6. The road interpretation plan issued by the PWD in response to the appellant's application constituted an answer to the requisition;

(3) the parties have used the words, "being found unsatisfactory to you or your solicitors," and these words are clear and must be read in their ordinary sense; due weight and effect must be given to the express words used by the parties;

(4) the parties intended that the unsatisfactoriness of any of the answers to the requisitions was a matter lying wholly within the subjective judgment of the appellant or his solicitors. However, there are constraints on the exercise of such a drastic right by the appellant, as a purchaser;

(5) where the contract gives a right to the purchaser to annul a purchase in certain circumstances, namely, if any of the answers to the requisitions are found to be unsatisfactory to the purchaser or his solicitor, the exercise of that right under a clause, such as clause 6, is equally subject to the control of the court. It is the use of that right that is not to be arbitrary or without reason, and the court will not allow a purchaser to call the whole contract off in the face of any of the answers to requisitions to which he takes what is merely a capricious or fanciful objection;

(6) a slight widening of the road may well be beneficial to such development and is not necessarily an adverse or minus factor. Looking at the facts, there was no ground for the appellant to invoke clause 6;

(7) the purported rescission by the appellant of the sale and purchase agreement was prompted by his dissatisfaction over the area of the property than by any real unsatisfactoriness of the answer contained in the road interpretation plan.

Cases referred to:

(1) *Ng Khong Lim* v. *Nancy Teo* [1985] 2 M.L.J. 417, 420.
(2) *Tatlien Hardware Pte. Ltd.* v. *Tan & Lie & Anor.* [1982] 1 M.L.J. 9.
(3) *Teo Hong Choo* v. *Chin Kiang Industries Pte. Ltd.* [1983] 2 M.L.J. 309.
(4) *Duddell* v. *Simpson* (1866) L.R. 2 Ch. App. 102, 106 to 107.
(5) *In re Jackson and Haden's Contract* [1906] 1 Ch. 412.
(6) *Selkirk* v. *Romar Investments, Ltd.* [1963] 3 All E.R. 994.
(7) *Chay Chong Hwa & Ors.* v. *Seah Mary* [1984] 2 M.L.J. 251; [1987] 1 M.L.J. 173, P.C.

COURT OF APPEAL.

M. Karthigesu (*Ms Mary Tan* with him) for the appellant.

Teo Guan Teck for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The property above described, Lot 3653 of Mukim IV with a house thereon known as No. 9 First Avenue, Singapore ("the property"), was at the material time owned by Sinar Company (Pte.) Ltd., the respondents. On November 25, 1982, the respondents, in consideration of a sum of $20,000 paid by Peh Kwee Yong, the appellant, by a document in writing called Option ("the Option"), offered to sell to the latter the property at a price of $1,860,000 and on the terms and conditions as therein provided. One of the terms of the sale is Clause 6 ("Clause 6"), which is as follows:

"6 The property is sold subject to your solicitors receiving satisfactory answers to all requisitions sent to or to be sent by them to the various Government departments and in the event of any of the answers to such requisitions being found unsatisfactory to you or your solicitors you may annul the sale in which event the 10% deposit paid by you shall forthwith be refunded to you without any interest or deductions whatsoever and neither party shall have any claims or demands against the other for costs damages or compensation whatsoever each party to pay his own legal costs in respect of the abortive sale and purchase. Provided if such replies to such requisitions are not received by the date of completion as aforesaid, then such requisitions shall be deemed to be satisfactory."

It is this term that has given rise to the present litigation.

Soon after receipt of the Option, the appellant's solicitors, on November 30, 1982, submitted to various government departments legal requisitions including a requisition to the Road Division of the Public Works Department ("PWD"). He also applied to the PWD, on December 3, 1982, for a road interpretation plan relating to the property. While awaiting the receipt of the answers to these requisitions, the appellant, on December 4, 1982, accepted the respondents' offer, and in accordance with the terms thereof paid to the respondents' solicitors a sum of $166,000, being the 10% of the purchase price less the initial payment of $20,000, to be held by the solicitors as stakeholders pending completion of the sale. A valid and binding agreement was thus made between the parties.

After the conclusion of the agreement, the appellant's solicitors received the answers to the legal requisitions, all of which appeared to be quite innocuous. On December 16, 1982 or thereabout, the appellant's solicitors further received the road interpretation plan relating to the property from the Road Division of the PWD which showed a narrow strip of the property abutting First Avenue being affected by a proposal for road widening. Immediately, the appellant's solicitors wrote a letter dated December 16, 1982, to the respondent's solicitors, informing the latter that the property was affected by road widening and also alleging that there was a misrepresentation made to the appellant that the land area of the property was over 14,000 sq.ft. whereas the actual land area was only 12,900 sq.ft. The letter also intimated that the appellant reserved his rights to rescind the contract and to demand for a refund of the 10% of the purchase price, and enquired whether the respondents would agree to a reduction of the purchase price. The allegation of misrepresentation was not admitted to by the respondents and no reduction of the purchase price was agreed to.

On January 4, 1983, the appellant's solicitors gave to the respondents' solicitors a notice in writing pursuant to Clause 6 that the appellant would not be proceeding with the purchase of the property and demanded for the return of the 10% of the purchase price. The respondents' solicitors replied on January 11, 1983, stating, *inter alia*, that the answer to the requisition – which in the context of the letter meant the road interpretation plan – was not unsatisfactory and disputed that the appellant was entitled to annul the sale and purchase of the property. Consistently with the stand taken, the appellant did not proceed with completion of the purchase of the property under the agreement. Immediately after the time for completion as provided in the agreement had elapsed, the respondents' solicitors followed up with a

letter dated January 29, 1983, to the solicitors for the appellant giving notice that the purchase was required to be completed within 21 days, and in default of completion by then, the respondents would treat the contract as at an end and forfeit and retain for their benefit the deposit paid by the appellant. Thereupon, the appellant, on February 4, 1983, applied to the High Court in Originating Summons No. 78 of 1983 for numerous declarations, of which eventually only the following two declarations were pursued by the appellant, namely: (i) a declaration that pursuant to Clause 6 the appellant was entitled to rescind and annul the sale and purchase of the property on the ground that the appellant had found that the answer to the requisition from the PWD unsatisfactory, in that the property was affected by a proposal for road widening, and (ii) a declaration that the appellant had effectively rescinded the purchase of the property on January 4, 1983. The application was resisted by the respondents and was heard before Lai Kew Chai J. At the instance of Lai Kew Chai J., the appellant's solicitors caused the portion of the property affected by the proposal for road widening to be surveyed, and on survey, it was found to contain an area of 30.6 sq. m. (329 sq. ft.). This area appeared to have been accepted by both parties.

It was argued on behalf of the appellant that under Clause 6, the appellant was entitled to annul the sale and purchase of the property as the answer to the requisition, *i.e.* the road interpretation plan, was unsatisfactory to the appellant. The question whether or not the answer to the requisition was unsatisfactory depended on the subjective view of the appellant, and the appellant had found the answer unsatisfactory. This argument was of course founded on the express words in Clause 6, namely, "in the event of any of the answers to such requisitions being found unsatisfactory to you or your solicitors." The learned Judge, however, rejected this argument and held that a true and natural construction of Clause 6 must place it on an objective and reasonable basis and that only those answers to the requisitions which were unsatisfactory to a reasonably determined purchaser could entitle such a purchaser to annul the sale and purchase agreement. On the facts, he held that the area affected by the proposed road widening was so inconsequential that no reasonably determined purchaser would regard it as unsatisfactory, and he therefore refused to make the declarations sought by the appellant. In the result, the application was dismissed with costs.

Against that decision, this appeal is now brought. Before us three issues were raised:

(i) whether the application for the road interpretation plan relating to the property is a requisition within the meaning of Clause 6;

(ii) whether, on a true construction of Clause 6, the unsatisfactoriness of any of the answers to the requisitions is to be determined on a subjective or an objective basis, and

(iii) if such a question is to be determined on a subjective basis, whether the appellant could in the circumstances of the case validly rescind or annul the sale and purchase agreement, as he sought to do.

The first issue turns on what is meant by "requisition"; that word has not been defined in the sale and purchase agreement. Generally, amongst conveyancing lawyers in Singapore, requisitions connote standard forms of questionnaires prescribed by government departments in which members of the public are required to submit in their application for information relating to properties. But the term, "requisition," is not a term of art and has no special or defined meaning even amongst conveyancing lawyers. In our view, there is no reason why it should not be given its ordinary and natural meaning, and in that sense, requisition is synonymous with enquiry or request for information. The application dated December 3, 1983, submitted by the appellant's solicitors to the PWD for a road interpretation plan was in a standard form prescribed by the PWD and is an enquiry or request for information relating to the property. Again, amongst conveyancing lawyers in Singapore, the purpose of a road interpretation plan is well understood, and we need not repeat what we said, *obiter*, in *Ng Khong Lim* v. *Nancy Teo*.[1] Suffice here to say that a road interpretation plan relating to a property generally gives information on the requirement, if any, present or future, of any road line or road widening on or affecting the property. On this basis, the application of December 3, 1983, submitted on behalf of the appellant to the PWD is in the ordinary sense a "requisition" and is a requisition for the purpose of Clause 6. It therefore follows that the road interpretation plan issued by the PWD in response to the appellant's application constitutes an answer to the requisition.

We next turn to consider the meaning and effect of the other controversial words in Clause 6,

namely, "in the event of any of the answers to such requisitions being found unsatisfactory to you or your solicitors"; the controversy is centred on the last five words. As a prelude to his submission on this point, Mr. Karthigesu on behalf of the appellant sought to set out the background against which the sale and purchase agreement in this case was made. He pointed out that this was a case where the contract was not made in conformity to "the old established practice" where a contract for the sale and purchase of land would be entered into only after all the necessary searches and investigations had been carried out and a purchaser would then decide whether or not to enter into such a contract. The appellant, he said, was granted an option for which he paid a sum of $20,000, which was non-refundable, and within a short period of 10 days he had to decide whether or not to enter into the contract to purchase the property. If he wished to purchase the property, he would have to exercise the Option and conclude the agreement within the 10 days, without the benefit of a full search and the answers to the requisitions from the various government departments. The appellant, according to him, "was compelled" to enter into the contract before he had the opportunity to make all the necessary searches and investigations. Hence, all the rights were on the side of the respondents, and there was an imbalance of bargaining positions – using his words, "the equities were unbalanced" as against the appellant. Accordingly, he submitted that justice and equity demanded that the appellant, as the purchaser, should not be held bound to the contract by the same strictness as in the case where a contract was entered into in accordance with the "old established practice." For that reason, Clause 6 was introduced essentially for his protection. We are not impressed by such an argument. There is no question of any imbalance of rights at all even in such a case as this. First, it is a well known fact that in 1982, there was a property boom and the Option was given in the context of a rising property market. Obviously, the appellant, as the purchaser, wished to bind the respondents, the vendor, to a definite and irrevocable offer. Equally obvious was that the respondents required a substantial consideration for such an offer. All these were agreed between them as willing buyer and willing seller. There was no suggestion that the parties negotiated with each other otherwise than at arm's length. Secondly, both parties entered into the transaction with the full benefit of legal advice. The Option was prepared by the respondents' solicitors and forwarded to the appellant's solicitors for approval. The appellant's solicitors amended the terms thereof and returned the document to the respondents' solicitors. The amendments were subsequently approved and agreed; the consideration was paid and the Option was issued. The parties knew perfectly well the manner in which eventually a binding agreement was to be made, and they must be taken to know exactly what they had agreed. There is no reason why this contract should be construed differently from contracts made under "the old established practice."

A contract for the sale of land made in the form as the agreement here was made – an option issued by a vendor and subsequently accepted by the purchaser on the terms of the option within a short period of time – is not a rarity in Singapore. Nor is it uncommon to incorporate into such a contract a condition or term giving a right to the purchaser to rescind or annul the purchase if any of the answers to the requisitions from government departments is unsatisfactory. At least two such contracts had resulted in litigation. The first was in the case of *Tatlien Hardware Pte. Ltd.* v. *Tan & Lie & Anor.*[2] There, the vendor by an option offered to sell to the purchaser a property at a certain price and on certain terms, and the option by clause 5 thereof provided:

> "The sale will be subject to the Purchaser receiving satisfactory answers to all requisitions (whether on title or to the City Authorities) and in the event of any of the answers to such requisitions being unsatisfactory, the Purchaser may annul the sale in which event the deposit shall be refunded to the Purchaser."

The option was exercised by the purchaser, and subsequently, a reply was received from the authorities in answer to the requisition which showed that the property was affected by a rear service road. The question was whether that reply amounted to an unsatisfactory answer to the requisition within the meaning of clause 5. The High Court decided that it was not unsatisfactory. Wee Chong Jin C.J., who heard the case, said:

> "It was submitted on behalf of the plaintiffs that the property in question is affected by a 'road widening line' which would be applied if and when the property is subsequently redeveloped and that meant that when the plaintiffs redevelop the property the portion covered by the road widening line would be compulsorily acquired thus diminishing the value of the property. In those circumstances it is submitted that the letter from the 'City Authorities' constituted an unsatisfactory answer within the meaning of Clause 5 of the Option. I rejected that submission. This is the case of a contract for the sale of land. The contract contained no express provision or condition that it was being purchased for redevelopment. There can be no inference that the intending purchaser was purchasing the property for redevelopment. There can be no implied term that the contract was condi-

tional upon the property being capable of redevelopment or that, if it could be redeveloped, there would be no scheme affecting its redevelopment. The fact that if and when the property is subsequently redeveloped some portion of it would be compulsorily acquired for road widening purposes thus diminishing the value of the property is immaterial."

The second case was *Teo Hong Choo* v. *Chin Kiang Industries Pte. Ltd.*,[3] where the sale and purchase agreement was made in the same manner: the vendor granted an option to the purchaser offering to sell the property concerned at a certain price which offer was subsequently accepted. The terms of the option also contained, *inter alia*, a clause which is almost identical with clause 5 of the contract in *Tatlien's* case; the clause provided as follows:

"The sale is subject to the Purchaser receiving satisfactory answers to all requisitions (whether on title or to the City Authorities) and in the event of any of the answers to such requisitions being unsatisfactory, the Purchaser may annul the Sale in which event the deposit paid shall be refunded to the purchaser without any recourse."

The answer to a legal requisition and the road interpretation plan showed that the property in question was affected by a road widening line and upon enquiry by the solicitors acting for the purchaser, the PWD said that the road widening line, being indicated in the road interpretation plan, was applicable when the site came up for redevelopment, or when the widening of the Upper Serangoon Road took effect. It was not in dispute that the property was affected by a regular line of street under section 32 of the Local Government Integration Act to the extent of about one-third of the total area of the property and that the regular line of street ran through the building then standing on the property. The High Court held that in all the circumstances of the case the answers to the requisitions were unsatisfactory and the purchaser was entitled to annul the purchase and obtain a refund of the deposit.

It is the submission of Mr. Karthigesu that Clause 6 in this case is significantly different from the corresponding provisions in the two cases, and the significant difference lies in the presence of the five words, "to you or your solicitors", which were absent in those provisions. The addition of these words, "to you or your solicitors", determines that the unsatisfactoriness of the answers to the requisitions should be looked at in a subjective sense, *i.e.*, unsatisfactory to the purchaser or his solicitors. The question here is one of construction of Clause 6. The parties here have used the words, "being found unsatisfactory to you or your solicitors," and these words are clear and must be read in their ordinary sense; due weight and effect must be given to the express words used by the parties. There is nothing in Clause 6 which is inconsistent with such construction. Furthermore, the contract was made by both parties with the benefit of the advice and assistance given by their respective legal advisers. They must be taken to know and mean precisely what they said in the contract. We are therefore of the opinion that the parties intended that the unsatisfactoriness of any of the answers to the requisitions is a matter lying wholly within the subjective judgment of the appellant or his solicitors.

The conclusion we have reached does not, unfortunately, resolve the matter before us. There arises a further question whether the appellant, as the purchaser, was, in the circumstances of the case, justified in giving the notice under Clause 6 to annul the sale and purchase agreement. There is, as Mr. Karthigesu candidly conceded, an objective element in determining the exercise by the appellant of his contractual right of annulment. In our view, there are constraints on the exercise of such a drastic right by the appellant, as a purchaser; he cannot in reliance on Clause 6 treat an answer to a requisition as unsatisfactory when there is no ground for him to say so, and in determining the answer as unsatisfactory he cannot act arbitrarily, capriciously or unreasonably and certainly not in bad faith; for that will be giving him an unbridled right to get out of the contract which he had deliberately and intentionally entered into. There is no direct authority on this point. However, we do not see why we cannot tap a line of authorities applicable in a converse situation where the courts in exercise of their equitable jurisdiction have restrained or controlled a vendor rescinding a contract for the sale of land by relying on a condition which confers on him a right to rescind the contract if the purchaser insists on removal or compliance of any objection or requisition (whether as to title or otherwise) which the vendor is unable or unwilling to do so. The clearest statement of law on this point is found in the following passage (albeit *obiter*) from the judgment of Turner L.J. in *Duddell* v. *Simpson*[4]:

"The conditions of sale give power to the vendor to annul the contract if the purchaser shall insist upon any objection or requisition which the vendor is unable or unwilling to comply with. . . .

The condition speaks of an objection or requisition which the vendor shall be unable or unwilling to remove or comply with. The question of unwillingness does not arise in the

present case, because it is impossible, upon the evidence before us, to say that the vendor ever exhibited any unwillingness whatever to remove the objection. I only refer, therefore, to the question of unwillingness because several cases bearing upon it have been cited before us. Those cases have settled, and, I think, very wisely settled, that the word unwilling, in a condition of sale of this description, is not to be considered as giving an arbitrary power to the vendor to annul the contract. I think that in a case where the vendor annuls the contract on the ground of unwillingness, he must shew some reasonable ground for unwillingness; thus, for instance, he may shew that if he proceeds to comply with a requisition, he will be involved in expenses far beyond what he ever contemplated, or be involved in litigation and expense which he never contemplated, and for avoiding which he reserved to himself the power of annulling the contract. But to say that a vendor, upon a condition of that description, could annul a contract brevi manu, without attempting to answer any of the requisitions which are made on the part of the purchaser, would be opposed both to principle and authority; for that would, in truth, be giving to the vendor the power of saying that that which was intended as a sale, and was a sale, shall, in truth, be no sale at all."

In that case, the vendor, who was entitled to a lease for a term of 24 years, less 3 days, sold his leasehold interest, relying on the promises of the persons entitled to the 3 days to concur and join in the sale. One of the terms or conditions of sale was as follows:

"If the purchaser shall insist on any objection or requisition as to the title, or abstract or evidence of title, particular, conditions, conveyances, or otherwise, which the vendor shall be unable or unwilling to remove or comply with, the vendor may, by notice in writing, to be given to the purchaser or his solicitor at any time, and notwithstanding any negotiation or litigation in respect of such objection or requisition, annul the sale, ..."

The persons in whom the 3 days were vested subsequently refused to concur and join in the sale. The purchaser in his requisition to the vendor insisted on such concurrence and joining in, and as the vendor was unable to comply with such requisition, he gave notice of annulment of the sale pursuant to that condition. It was held that the vendor was unable to comply with the requisition and the notice of rescission was effectual.

The above statement of law of Turner L.J. was quoted with approval by Collins M.R. in the case of *In re Jackson and Haden's Contract.*[5] In that case, the vendors agreed to sell to the purchaser a villa residence by description which was wide enough to include the mines and minerals under it, which, however, were reserved to the grantor in a previous conveyance under which the vendors derived title. One of the terms or conditions of sale, namely, clause 13, provided as follows:

"13. . . . If the purchaser shall insist on any objection or requisition as to title or evidence of title which the vendors shall be unable, or, on the ground of expense, shall decline to remove or comply with, then, ... the vendors shall be at liberty, by notice in writing, signed by them or their solicitor, and delivered to the purchaser or his solicitor, to rescind the contract. . . . "

The purchaser demanded in their requisition that the vendors' title to the minerals should be furnished and insisted on compliance by the vendors. As the vendors were unable to comply with the requisition, they invoked the provision of clause 13 and gave notice to rescind the contract. The court held that the vendors were reckless in making the description of the property and that there was a clear failure of duty on their part, which disentitled them from availing clause 13 to rescind the contract. In the course of his judgment, Collins M.R. said, at page 419:

". . . Though in my opinion this particular condition, on the face of it, might apply to the particular failure of title which arises in this case, and that the objection raised by this purchaser is an objection addressed to title, nevertheless it does seem to me that, within the principle of the cases which have been cited, it is not an objection that the vendors, on this contract, can avail themselves of as justifying them in rescinding this contract. Now, it is to be noted that, in dealing with this right to rescind, the learned judges have always criticised most carefully the conduct of the parties to the contract, and the purpose for which the particular condition must be supposed to have been introduced, with a view to seeing whether or not it is, in the circumstances of the particular case, a condition that ought to be applied for the benefit of the person who has introduced it. In this particular case, there is no doubt that clause was introduced for the benefit of the vendors. The Court considers whether or not the vendor has so acted in the matter as to be entitled to avail himself of that condition; . . . . "

The same point came up for consideration before the Privy Council in *Selkirk* v. *Romar Investments, Ltd.*,[6] which was an appeal from the judgment of the Supreme Court of the Bahamas Islands. In that case, the contract of sale of land contained, *inter alia,* clause 3(3), which was in the following terms:

"(3) Should any objection or requisition whatsoever be insisted on which the vendor shall be unable or unwilling to satisfy or comply with he may (notwithstanding any attempt to remove or satisfy the same or any negotiation or litigation in respect thereof) by notice in writing to the purchaser or his solicitor rescind the contract upon the terms hereinafter mentioned in sub-clause (7) of this clause . . . . "

There, the title of the vendor to a part of the property sold showed that there was a crown grant to a grantee followed by a conveyance executed by one described in the recital of the conveyance as

the only son and heir-at-law of the grantee who had died. The purchaser requisitioned the vendor for the production of the death certificate of the grantee and evidence of title of the person executing the conveyance as the only son and heir-at-law of the grantee. Despite extensive searches made, the vendor could not comply with the requisition. As there was nothing more that could be done to comply with the requisition, the vendor, acting under clause 3(3), by notice in writing, rescinded the contract. The rescission was challenged by the purchaser, and the Supreme Court held that the vendor did not act capriciously, arbitrarily, or in bad faith, or without reasonable cause. That decision was upheld by the Privy Council. Viscount Radcliffe in delivering the judgment of the Board said, at page 999:

"Now, on what can the appellant rest his claim to set aside the respondent's notice of rescission? It is plain enough that, so far as the terms of the contract go, the respondent is within its rights. Clause 3(3) is as much a part of the various undertakings and stipulations that make up the total nexus of the parties' agreement as any other of its clauses, and it is in fact a stipulation that was included in the draft put forward by the purchaser. If a vendor, having stipulated for or been conceded such a right, is to be precluded from asserting it in any particular context, it must be by virtue of some equitable principle which enures for the protection of the purchaser; and it is not in dispute that courts of equity have on numerous occasions intervened to restrain or control the exercise of such a right of rescission in contracts for the sale of land, despite what, on the face of the contract, its terms seem to secure for the vendor.

It does not appear to their lordships, any more than it did to the learned judge who tried the action, that there is any room for uncertainty as to the nature of the equitable principle that is invoked in these cases. It has frequently been analysed, and frequently applied, by Chancery judges, and, although the epithets that describe the vendor's offending action have shown some variety of expression, they are all related to the same underlying idea, and their variety is only due to the fact that, as each case is decided according to the whole context of its circumstances and the course of conduct of the vendor, one may illustrate more vividly than another some particular aspect of that idea. Thus, it has been said that a vendor, in seeking to rescind, must not act arbitrarily, or capriciously, or unreasonably. Much less can he act in bad faith. He may not use the power of rescission to get out of a sale "brevi manu", since by so doing he makes a nullity of the whole elaborate and protracted transaction. Above all, perhaps, he must not be guilty of "recklessness" in entering into his contract, a term frequently resorted to in discussions of the legal principle and which their lordships understand to connote an unacceptable indifference to the situation of a purchaser who is allowed to enter into a contract with the expectation of obtaining a title which the vendor has no reasonable anticipation of being able to deliver. A vendor who has so acted is not allowed to call off the whole transaction by resorting to the contractual right of rescission (see *Re Jackson and Haden's Contract* [1906] 1 Ch. 412; *Baines* v. *Tweddle* [1959] Ch. 679)."

Though in that case, a great deal of discussion had been centred on the question of "recklessness" in entering into the contract, that obviously was not the only matter with which the Board was concerned. Viscount Radcliffe said, at page 1001:

"No doubt recklessness in entering into the contract may not be the only thing to be regarded when a vendor's right to exercise a contractual power of rescission is brought into question. It is the use of that right that is not to be arbitrary or without reason, and courts have expressed themselves from time to time as being unwilling to allow a vendor to call the whole contract off in the face of some requisition to which he takes what is merely a capricious or fanciful objection."

All these cases were considered by this Court in *Chay Chong Hwa & Ors.* v. *Seah Mary,*[7] where the vendors relying on a similar condition of sale sought to rescind or annul the sale and purchase agreement, and it was held that in the circumstances of that case the vendors acted unreasonably and were not entitled to exercise their right of rescission under the agreement. We quote below the following passage from the judgment, at p. 256:

"From these authorities it is clear that in a contract of sale and purchase of property a condition such as condition 5 does not confer on the vendor a wide and unfettered right to annul the contract. In determining whether a vendor can avail himself of such a condition the court will look closely at the conduct of the parties to the contract. In particular, in relation to the matter objected to or required by the purchaser to be complied with, the vendor must not have been guilty of "recklessness" in entering into the contract, and unwillingness on the part of the vendor to meet the objection or comply with the requirement raised by the purchaser must not in the circumstances be unreasonable. A vendor cannot in reliance on such condition arbitrarily, capriciously or unreasonably rescind the contract, and certainly he cannot do so acting in bad faith."

That decision on appeal was upheld by the Privy Council: see [1987] 1 M.L.J. 173.

On the basis of these authorities, it seems to us clear that even if a contract spells out a term or condition under which a party – in those cases the vendor – in certain circumstances is entitled to rescind the contract, the court will still look into the conduct of that party to determine whether, in the circumstances of the case, he is entitled to exercise the right of rescission under the contract. This was clearly stated by Cozens-Hardy L.J. in his judgment of *In re Jackson and Haden's Contract* (*supra*) at page 425:

". . . I think, therefore, that, as a mere question of construction, clause 13 of this contract does apply to a case like the present. But having got thus far is not sufficient to enable

the appellants to succeed; because there is the second question which we have to consider: assuming that the condition applies, is it one upon which the vendors are entitled to rely? And when we look at the authorities, and particularly the recent authorities in the Court of Appeal, that is the way in which conditions of this kind have been dealt with, and ought to be dealt with, by the Court. It is not enough for the vendor to say: Here is a condition which, as a matter of construction, entitles me to rescind this contract. The answer is: No, you must look at all the circumstances; are they such as to entitle you to put an end to that contract of sale which, in form and in fact, you have entered into?"

By parity of reasoning the same principles are applicable in a situation such as the present case, where the contract gives a right to the purchaser to annul a purchase in certain circumstances, namely, if any of the answers to the requisitions are found to be unsatisfactory to the purchaser or his solicitor. In our judgment, the exercise of that right under a clause, such as Clause 6, is equally subject to the control of the court. In the words of Viscount Radcliffe, it is the use of that right that is not to be arbitrary or without reason, and the court will not allow a purchaser to call the whole contract off in the face of any of the answers to requisitions which he takes what is merely a capricious or fanciful objection.

We now turn to the facts of the present case. The area affected by the proposal for road widening was only about 30.6 sq. m. or 329 sq. ft. The learned Judge found this area inconsequential and we agree with him entirely. Mr. Karthigesu conceded that he had difficulty in joining issue on this point; the point is really unarguable. Further, the road proposal would only become relevant upon future redevelopment of the property and this was clarified by a letter of January 21, 1983, written by the PWD to the solicitors for the respondents. Paragraphs 2 and 3 of that letter said:

"2 Our road interpretation plans show the PWD's long term safeguarding lines for various roads in Singapore. The primary aim of these plans is to indicate to the applicant(s) the extent of the land that would be affected by our long-term road proposals.

3 On redevelopment of the subject sites, the owners/developers are generally required to set back their development to comply with the line of road reserve and to surrender the affected land to Government."

It is far from certain that the proposed road widening would bring about a diminution in the value of the property even upon redevelopment thereof. A slight widening of the road may well be beneficial to such redevelopment and is not necessarily an adverse or minus factor. Looking at the facts, it seems to us clear that there was no ground for the appellant to invoke Clause 6.

Lastly, from the correspondence passing between the solicitors for the appellant and the solicitors for the respondents, and the affidavits that were filed, the major complaint of the appellant appeared to be that the respondents' agent in the course of negotiation with him had misrepresented the land area of the property to be over 14,000 sq. ft., which he, the appellant, subsequently discovered to be only 12,900 sq. ft. These allegations the appellant abandoned at the hearing before the High Court. It seems to us that the purported rescission by the appellant of the sale and purchase agreement was prompted by his dissatisfaction over the area of the property than by any real unsatisfactoriness of the answer contained in the road interpretation plan. If that was the position, as it seems to us it was, then we have serious doubts on the good faith of the appellant in seeking to exercise his right of rescission under Clause 6.

In the result, this appeal must fail, and is dismissed with costs. There will be the usual consequential order for the payment to the respondents or their solicitors of the amount deposited in Court as security for costs of the respondents.

Appeal dismissed.

Solicitors: *Ng Liang Poh & Co.; Teo Guan Teck & Co.*

TIGER PROPERTIES PTE. LTD. v. HAW PAR PROPERTIES (SINGAPORE) PTE. LTD.

[C.A. (Wee Chong Jin C.J., Thean & P. Coomaraswamy JJ.) March 27, 1987]

[Singapore – Civil Appeal No. 59 of 1984]

Property Tax – Assessment of annual value of property – Assessment of property tax – Whether increase in property tax – "First assessment of the demised premises" – Meaning of – Property Tax Act (Cap. 144, 1970 Ed.), ss. 18(2) & 19(A)(1).

Revenue Law – Property tax – Assessment of annual value of property – Assessment of property tax – Whether increase in property tax – "first assessment of the demised premises" – Meaning of – Property Tax Act (Cap. 144, 1970 Ed.), ss. 18(2) & 19(A)(1).

By four separate agreements, all dated September 8, 1979 the appellants agreed to lease to the respondents res-